

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DON ABREU,

Plaintiff,

Vs.

No. CIV-03-1468 RB/RHS

MORA-SAN MIGUEL ELECTRIC
COOPERATIVE, INC., MORA COUNTY
SHERIFF'S OFFICE, FOURTH JUDICIAL
DISTRICT ATTORNEYS OFFICE, LUCERO
PROFESSIONAL SERVICES, LTD., CARL
ARMIJO, in his official and individual capacity,
ERNESTO GONZALES, LEVI ALCON, AND YVETTE ALCON,

Defendants.

DEFENDANT MORA-SAN MIGUEL ELECTRIC COOPERATIVE, INC.'S MOTION FOR
SUMMARY JUDGMENT AS TO COUNTS I, II, III, IV, V, X, XI AND XII OF
PLAINTIFF'S COMPLAINT

COMES NOW Defendant, Mora-San Miguel Electric Cooperative ("Defendant Coop"), by and through its attorneys of record, Beall & Biehler, and hereby moves this Court pursuant to Fed.R.Civ.P. 56 for entry of summary judgment as to Counts I, II, III, IV, V, X, XI and XII of Plaintiff's Complaint. As grounds therefore, Defendant Coop states as follows:

1. On December 2, 2003 Plaintiff filed his Complaint entitled "Complaint for Damages from Breaches of Express and Implied Contracts, Retaliatory Discharge, Prima Facie Tort, Violations of the United States Constitution, Conspiracy, Violations of the Employee Polygraph Protection Act, Breach of the Covenant of Good Faith

and Fair Dealing, Defamation, Negligence and Violations of the New Mexico Tort Claims Act," in the Fourth Judicial District Court for the State of New Mexico.

2. On December 29, 2003 Plaintiff's Complaint was removed to the United States District Court for the District of New Mexico.
3. Plaintiff's Complaint arises from his termination from employment with Defendant Coop. Plaintiff was employed by the Coop as a line superintendent. On the weekend of April 11, 2003 a compressor belonging to the Coop was stolen. Defendant Coop had reason to believe that Plaintiff was involved in the theft. Plaintiff refused to account for his whereabouts during the weekend of the theft and ultimately was terminated for insubordination with respect to the theft investigation.
4. Plaintiff's Complaint sets forth fourteen causes of action. Of those fourteen, the following nine are brought against Defendant Coop: (1) Breach of an Express Contract of Employment; (2) Breach of an Implied Contract of Employment; (3) Retaliatory Discharge; (4) Breach of the Covenant of Good Faith and Fair Dealing; (5) Prima Facie Tort; (6) Violations of the Employee Polygraph Protection Act; (7) 42 U.S.C. Section 1983 Conspiracy; (8) 42 U.S.C. Section 1983 Substantive Due Process Property Interest; and (9) 42 U.S.C. Section 1983 Substantive Due Process Liberty Interest.

5. This motion seeks summary judgment as to all counts against Defendant Coop, with the exception of the count alleging a violation of the Employee Polygraph Protection Act ("EPPA") as issues of fact exist regarding that count. Summary judgment is appropriately entered as to these causes of action as there are no genuine issues of material fact and Defendant Coop is entitled to judgment as a matter of law.

6. A memorandum in support of this motion is filed herewith.

7. Due to the nature of this motion it is deemed opposed.

WHEREFORE, Defendant Coop respectfully requests that this Court enter summary judgment as to Counts I, II, III, IV, V, X, XI and XII of Plaintiff's Complaint and for such other and further relief as the Court deems proper.

Respectfully Submitted,

BEALL & BIEHLER

By: **E – File Only**

GREGORY L. BIEHLER

Attorneys for Defendants

Mora San-Miguel Electric Coop Inc.,

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I hereby certify that a true and
Correct copy of the foregoing
was mailed to:

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on this 3rd day of September, 2004.

E – File Only
GREGORY L. BIEHLER